HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION Nos. 16305 AND 17950 OF 2006

Dated 8th September, 2006

W.P.No. 16305 of 2006

Between:
Ms. Akanksha Singh

… Petitioner

And

Government of A.P. represented by its
Principal Secretary, Health, Medical & Family
Welfare Department, Secretariat, Hyderabad
and others.

…Respondents

W.P.No. 17950 of 2006

Between:
Purnendu Kumar Sharma

… Petitioner

And

Government of A.P., Dept. of Sainik Welfare,
Secretariat, Hyderabad and others.

… Respondents.

COMMON ORDER:

As similar issue arises for consideration in both these writ petitions, they are disposed of by this common order.

I refer to the fact situation in writ petition No.16306 of 2006 for consideration and decision.

The petitioner, whose claim for allotment of seat in MBBS course in the quota reserved for Children of Armed Personnel

was rejected, has filed this writ petition seeking a writ of mandamus to declare the action of the respondents in denying the seat in M.B.B.S. course under CAP category for the academic year 2006-07 as illegal and for a consequential direction to provide a seat to the petitioner.

The petitioner studied from 5th class onwards and up to Intermediate in the schools and the college at Visakhapatnam in Andhra Pradesh. She appeared for the Engineering, Agriculture and Medical Common Entrance Test (EAMCET) held in the month of May, 2006 and secured the rank of 2094 with Hall Ticket 4704500. The petitioner claimed a seat for admission into M.B.B.S. Course in the quota reserved for the Children of Armed Personnel. During the counselling held on 24.7.2006, the claim of the petitioner was rejected on the ground that her father is a "non-local ex-serviceman, not a native of Andhra Pradesh and resident of Uttar Pradesh till 25.5.2006. Hence, not eligible for admission. Further the father of the Petitioner has changed his address only on 25.5.2006 vide BOS/GB/107644 dated 13.5.2006."

It is the case of the petitioner that as the petitioner studied her school education from 5th class onwards and up to Intermediate in the schools and the college in Visakhapatnam, which falls within the Andhra University Local Area, her claim cannot be rejected on the ground that she is a non-local. Further, it is also the case of the petitioner that the father of the petitioner was registered with District Sainik Welfare Board, Visakhaptnam and he was issued identity card bearing No. AP22 009832 on 27.4.2000 and as such, the same will prove that the petitioner's father is a permanent resident of Visakhapatnam. As he is residing in the State of Andhra

Pradesh for more than 5 years, the petitioner is entitled for admission in the quota reserved for Children of Armed Personnel.

Separate counter-affidavits have been filed by the respondents 2 and 3.

In the counter affidavit filed by the second respondent-University it is stated that as per the rules framed under Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, though 1% of the seats in M.B.B.S. and B.D.S. courses are reserved for children of ex-servicemen, but, however, the same is subject to the condition that the ex-servicemen should be residing for a minimum of five years in Andhra Prdesh. It is stated that the petitioner attended to the counselling for admission under the said category on 24.7.2006 and the Verifying Officers of the Director of Sainik Welfare Board, while scrutinizing the candidature of the petitioner endorsed that the father of the petitioner is not a native of Andhra Pradesh and a resident of Uttar Pradesh till 25.5.2006 and, therefore, not eligible for admission. It is stated that the Director of Sainik Welfare Department is the authority for scrutiny of applications and relevant documents for considering the eligibility of the candidates for admission under the quota meant for Children of Armed Personnel category, and, in view of the endorsement made by the said authority, the petitioner is not entitled for admission.

In the counter affidavit filed by 3rd respondent, it is stated that the father of the petitioner, Sri Janardhan Singh, served in Indian Navy for 21 years and retired from service on 30.6.1999 and he is a domicile of Uttar Pradesh as per the particulars

mentioned in the Discharge Certificate issued by the Naval authorities. It is stated that there are certain conditions laid down in the proceedings issued by the Ministry of Defence, Government of India, preventing the ex-servicemen availing benefits from two or more States. It is stated that as per the Manual of Procedures issued by the Director-General of Resettlement, New Delhi, every ex-serviceman must register with the Zilla Sainik Board serving their area of residence to avail all benefits from their respective States. It is stated that the ex-serviceman, Janardhan Singh, father of the petitioner is a domicile of Uttar Pradesh and is eligible for concessions and benefits in the State of Uttar Pradesh. It is stated that if an ex-serviceman belongs to a particular District, he is eligible to register only in that native District unless he changes his registration as per the procedure laid down. Further, it is stated that the petitioner made claim to be a local of Andhra Pradesh by virtue of her study and she may seek admission under general quota or in open competition, but under the quota meant for Children of Armed Personnel, she is not entitled, as much as the permanent residence of the father of the petitioner in the Discharge Certificate was shown as that of Ballia District of Uttar Pradesh up to 25.5.2006 and only thereafter, the permanent address was changed on the request made by the petitioner. While endorsing Committee's opinion for rejection of the claim for reservation under CAP category, it is stated that a person cannot be made eligible for availing the concessions provided for Children of Armed Personnel from two States simultaneously. It is stated that there is a procedure for change of address in the Discharge Certificate and merely because he obtained Identity Card from Visakhapatnam, basing on the same, the petitioner cannot claim benefit of reservation under

the category meant for Children of Armed Personnel. Further referring to instructions issued by the Director-General of Resettlement, Government of India, Ministry of Defence, it is stated that the basic purpose of issue of identity card has been to confer the status of ex-serviceman to the holder of the card and to facilitate his identity, which entitles him to various benefits and concessions. It is stated that the issue of Identity Card by particular Zilla Sainik Board does not mean that cardholder belongs to that State/Zilla Sainik Board for the purpose of availing concession. It is stated that Zilla Sainik Welfare Officer, Visakhapatnam has erroneously registered his name without following the procedure laid down by the authorities of Ministry of Defence. Reiterating that change of permanent address of petitioner's father is not effected through his Record Office, it is stated that the petitioner cannot avail the benefit of reservation under Children of Armed Personnel category as change of permanent address was effected only in the month of May, 2006.

It is submitted by Shri K.G.K. Prasad, learned counsel appearing for the petitioner in this case that as per the rules which are applicable for grant of admission to medical courses and to claim reservation in the quota reserved for Children of Armed Personnel, the only requirement is that one should be a resident of a particular place for more than five years and in this case, there is a residence certificate issued by the concerned Mandal Revenue Officer and the petitioner's father resided for more than five years in Visakhapatnam. In that view of the matter, there is no reason or justification for rejecting the claim of the petitioner. It is further submitted that in the year 2000 itself, the petitioner's father registered with the Sainik Welfare

Board in Visakhapatnam, and, thereafter, as there is gap of five years and the petitioner studied for more than five years in Visakhapatnam District, which is the local area of Andhra University, there is no valid reason to reject her claim for admission under the CAP category.

On the other hand, it is submitted by the learned counsel appearing for Sainik Welfare Board, and, Shri D.V.Nagarjuna Babu, learned counsel appearing for the University submitted that in the quota reserved for Children of Armed Personnel, the children of armed personnel are entitled to claim reservation only from the District where they have domicile, but not from every State where they reside for minimum period of five years. It is submitted in this case that after the petitioner's father was discharged from Navy service, he registered his permanent address as that of Ballia District in Uttar Pradesh and only on his application submitted in the month of April, 2006, his permanent address is changed to that of the Andhra Pradesh and inasmuch as he has not resided for 5 years thereafter, the petitioner is not eligible for grant of admission. In support of his contention that mere residency cannot be equated to that of domicile, Shri Nagarjuna Babu relied upon a judgment of the Supreme Court in **Chandigarh Housing Board v. Gurmit Singh**[1]

The admissions to the undergraduate medical courses and dental courses are regulated by the rules framed in G.O.Ms.Nos. 183 and 184 dated 30.6.2004 framed in exercise of the powers under Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983. As per the said Rules, 1% of the seats are reserved for Children of Ex-servicemen and

serving service personnel of three wings of the defence service i.e. Army, Navy and Air Force, subject to the condition that ex-servicemen etc. are residing for a minimum period of 5 years in Andhra Pradesh, provided, that if suitable candidates are not available equivalent to fulfill the above reservation, the condition of five years minimum period of residence shall not be insisted upon. However, there is a note to the sub-rule (3) of Rule 9 of the Andhra Pradesh Professional Institutions (Regulation of Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2004 and the candidates claiming reservation benefits under the above category shall produce their original documents in respect of their claim to the Committee for Admissions and it shall be entitled to refer the original documents of the candidates claiming reservation for scrutiny and confirmation to the authorities including that of the Director of Sainik Welfare Department, Andhra Pradesh. As per the prospectus issued by the University, under clause 7.4.2, the children of ex-servicemen are required to produce the following original certificates at the time of counselling:

> "7.4.2. The children of ex-servicemen are directed to bring the following original certificates at the time of counselling:
>
> 1. Original discharge certificate of his/her parent.
> 2. Original Identity Card of his/her parent issued by Zilla Sainik Welfare Officer, concerned district.
> 3. Original Pension book of his/her parent if pensioner.
> 4. Residential Certificates of the parent of the candidate issued by the Mandal Revenue Officer.
> 5. Certificates of Gallantry Award, Gazette Notification, copies of part-II order and relevant documents if claims under Priority-I, Priority-II and Priority-III.
> 6. Children of Armed Force Personnel Certificate issued by Zilla Sainik Welfare Officer."

The claim of the petitioner was rejected with an endorsement 'non-local ex-serviceman, not native of Andhra Pradesh,

resident of Uttar Pradesh till 25.5.2006". The term "non-local" used in the endorsement made is not with reference to local areas as stated in the Presidential Order issued in exercise of powers under Article 371 of the Constitution of India. The Presidential Order was issued for effecting reservation to local candidates by dividing the area into three local areas, for the purpose of employment and admission in the educational institutions in the State of Andhra Pradesh. For students who claim reservation under the quota reserved for Children of Armed Personnel, the concept of local areas as defined in the Presidential Order has no application. There is absolutely no dispute as to the local area of the petitioner having regard to the fact that she studied from 5th class onwards till Intermediate at Visakhapatnam, which falls within the local area of Andhra University. The said term "non-local" is used while rejecting the candidature of the petitioner, only in the context that the petitioner's father is not permanent resident of Andhra Pradesh for minimum period of five years so as to claim reservation. In this case, it is not in dispute that after petitioner was discharged from Naval service in the year 1999, in the Discharge Book issued, his name was registered in the Zilla Sainik Board, Ballia District in Uttar Pradesh and his permanent address of Ballia District was mentioned therein. Though it is the case of the petitioner that the petitioner's father was also registered in the year 2000 itself by the Zilla Sainik Board in Visakhapatnam, but, it is stated in the counter affidavit filed by the 3rd respondent that the said entries are not made by following the procedure and the practice in vogue. The petitioner did not get his permanent address in Uttar Pradesh changed and only in the month of April, 2006, it appears, he made an application to the concerned

authorities for change of permanent home address. The same is evident from the proceedings dated 13.5.2006 issued by the Bureau of Sailors, Chitah Camp, Mankhurd, Mumbai and the relevant portion of the letter addressed to the petitioner reads as follows:

> " CHANGE OF PERMANENT HOME ADDRESS
> JANARDAN SINGH, EX. CHA (SS)
> 1. refer to your letter No. 603/CHA/VER/2006-B, dated 10 Apr.
> 2. The abovementioned ex-sailers Permanent Home Address has been duly amended in his records vide this Office order No. 05/2006 and copy of the same is enclosed for your further reference. The Discharge Book/Service Certificate duly amended together with a copy of this office Order is forwarded herewith for handing over the same to the individual concerned.
> 3. Request acknowledge receipt."

Though it is the case of the petitioner that he was issued identity card by the Visakhapatnam Zilla Sainik Board, but, it is not in dispute that originally, he was also registered with Zilla Sainik Board of Ballia District in Uttar Pradesh. Even the Ministry of Defence by their proceedings dated 21.1.1992 issued in proceedings 4008/DGR/S&R/Res-9 addressed to various directorates of Sainik Boards clearly stated that the issue of identity card by a particular Zilla Sainik Board does not mean that cardholder belongs to that State/Zilla Sainik Board for the purpose of availing any benefit/concession. There are also instructions issued in the proceedings dated 7.7.1988 from the Army Headquarters, Delhi, regarding change of particulars in the discharge certificates. Relevant paragraph in the above said proceeding reads as follows:

> " Ex-servicemen, subsequent to their discharge/retirement, in certain cases, change their State/District/Place of their original domicile and settled down permanently in other states/districts or change their permanent address in the same district. Such ex-servicemen are approaching

> the Headquarters as well as the Record Offices for change of their home address recorded in their Discharge Certificate. With a view to help the ex-servicemen, it has been decided that ex-servicemen will apply for such changes with their Discharge Certificates to their Record Offices supported by a declaration from the individual duly verified by the Old Zilla Sainik Boards as well as new Zilla Sainik Boards."

In this case, though the petitioner claims to have obtained Identity Card from Zilla Sainik Board, Visakhapantam, but the fact remains that entries in the original Discharge Certificate reveal his permanent home address as that of Ballia District of Uttar Pradesh, and, only pursuant to his representation on 10.4.2006, changes were effected and he was communicated, by which, it cannot be presumed that the petitioner has been permanently residing in the State of Andhra Pradesh even prior to the date of his request for change of his permanent address in the Discharge Certificate. The requirement of residence for a minimum period of five years is to be read with reference to entries in the Discharge Certificate of army personnel, and, mere residency de hors the entries in the Discharge Certificate cannot be taken into account for the purpose of availment of reservation, concessions or benefits from a particular State. Otherwise, wherever the defence personnel serve for a period of five years, they will become eligible in all such places for availing concessions/reservation. From various proceedings, it is clear that the benefit of reservation is extendable to the said category only in the State where they have domicile either by origin or by choice. In this case, it is not in dispute that by origin, the petitioner belongs to Uttar Pradesh State and he has changed his permanent address only in the month of May, 2006. In that view of the matter, the petitioner is not entitled for reservation and the claim for admission to MBBS course under CAP category is rightly rejected by the respondents. While it is

open for the petitioner to seek admission in general category in the local area having regard to the study of the petitioner, as per the Presidential Order, but, however, for claiming reservation under quota reserved for Children of Armed Personnel, as the father of the petitioner did not reside for the minimum required period after changing his permanent home address, the claim of the petitioner is rightly rejected. It is not either stated that there are no suitable candidates available equivalent to fulfill the above reservation so as to consider the case of the petitioner on that count in the said quota. In that view of the matter, the writ petition is liable to be dismissed. Accordingly, the same is dismissed.

Insofar as the petitioner in Writ Petition No. 17950 of 2006 is concerned, the father of the petitioner had enrolled into Indian Force in the year 1973 and was discharged from service on 1.9.1999 and got himself registered at Zilla Sainik Board, Muzaffarpur on 19.11.1999 with registration No. j/365/99. In this case, the change of permanent address was effected from Bihar to Andhra Pradesh only on 19.1.2006 and prior to that, he was a resident of Bihar. In that view of the matter, the claim of the petitioner is rightly rejected. Therefore, for the very same reasons stated for dismissal of Writ Petition No.16305 of 2006, this writ petition is also liable to be dismissed.

In the result, both the writ petitions are dismissed, but, without any order as to costs.

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8--9—2006 **(R.SUBHASH REDDY, J.)**

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[1] (2002) 2 SCC 29.